

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

BOARD MEETING

Tuesday, December 15, 1981

JESSE M. KNOWLES
CHAIRMAN

400 Royal Street
New Orleans, Louisiana

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

December 15, 1982

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MINUTES OF MEETING
LOUISIANA WILDLIFE AND FISHERIES COMMISSION
NEW ORLEANS, LOUISIANA

December 15, 1981

Chairman Jesse M. Knowles, presiding.

Members present:

Mr. Jesse M. Knowles, Chairman
Mr. James C. Farrelly, Vice Chairman
Mr. Wayne C. Ducote, Member
Mr. J. C. "Sonny" Gilbert, Member
Mr. George N. Gray, Member
Mr. M. Bobby Orgeron, Member
Mr. Charles A. Riggs, Member

Also present: Mr. Jesse J. Guidry, Secretary

* * *

The regular monthly meeting of the Louisiana Wildlife and Fisheries Commission was called to order by the Chairman, Mr. Jesse M. Knowles, on Tuesday, December 15, 1981, at 10:00 A.M.

Commissioner Gray said a prayer. Chairman Knowles stated that this is to be a regular feature of future meetings.

A roll call of members present was taken.

Upon motion of Mr. Charles A. Riggs, seconded by Mr. Wayne C. Ducote, and passed unanimously, the Commission dispensed with the reading of the minutes of the Commission Meeting held on October 26, 1981, and moved their adoption.

Upon motion of Mr. Charles A. Riggs, seconded by Mr. M. Bobby Orgeron, and passed unanimously, the Commission dispensed with the reading of the minutes of the Commission Meeting held on November 23 and 24, 1981,

and moved their adoption.

Secretary Jesse J. Guidry presented a resolution honoring Mr. J. C. "Sonny" Gilbert for his outstanding service with the Louisiana Wildlife and Fisheries Commission.

Motion was made by Mr. Wayne C. Ducote, seconded by Mr. Charles A. Riggs, and passed unanimously, that the following resolution be adopted.

(The full text of the resolution
is here made part of the record)

WHEREAS, J. C. "Sonny" Gilbert has served on the Louisiana Wildlife and Fisheries Commission since December 11, 1976, and will continue to serve the Commission and the people of Louisiana as a Commissioner until December 10, 1982, and

WHEREAS, during the period he has served thus far, "Sonny" Gilbert has served as Vice Chairman and later as Chairman from February 27, 1979, to November 24, 1981, and

WHEREAS, as Chairman of the Louisiana Wildlife and Fisheries Commission for nearly two years, he has earned and enjoys the respect and admiration of the entire staff of the Department of Wildlife and Fisheries for the manner in which he has conducted Commission affairs and Departmental functions, and

WHEREAS, throughout his tenure of service on the Commission, and particularly during his term as Chairman, he has enthusiastically and helpfully participated in a wide range of related activities involving the Louisiana Wildlife Federation, the National Wildlife Federation, the Southeastern Association of Fish and Wildlife Agencies, Ducks Unlimited, the Wild Turkey Federation, and the International Association of Fish and Wildlife Agencies, and

WHEREAS, his deep interest in the many phases of wildlife and resource management has been demonstrated repeatedly through the years he has been associated with staff members of the Department of Wildlife and Fisheries, and

WHEREAS, his leadership of the Louisiana Wildlife and Fisheries Commission for many months has greatly broadened the public image of this important wildlife advisory board, and resulted in greater public appreciation and respect for the Commission and its responsibilities to the people of Louisiana, and

WHEREAS, his many services to sportsmen and those persons in Louisiana whose economic livelihood is hinged to proper and prudent management of wildlife and fisheries resources reflects favorably on all of those employed in this wildlife management agency, and

NOW THEREFORE BE IT RESOLVED that the staff of the Louisiana Department of Wildlife and Fisheries does this date express its congratulations to J. C. "Sonny" Gilbert for a job well done as Chairman of the Louisiana Wildlife and Fisheries Commission, and also expresses its appreciation for the opportunity of working closely with him during his term as Chairman and sharing the accomplishments of the Commission and the Department during his chairmanship.

* * *

Dr. Ted Ford presented a request from Anthony Guarisco for a permit to dredge clam and oyster shell from Lake Palourde, a highly-used recreational area adjacent to Morgan City. He stated additional guidelines are needed in this instance in addition to the usual permit for removal of fill material and a 404 Permit from the Corps of Engineers also would be needed. The guidelines, as presented by Dr. Ford, are quoted below:

(The full text of the resolution
is here made part of the record)

LAKE PALOURDE DREDGING RESTRICTIONS

1. This is a heavy-use recreational area and dredging is to be excluded from an area roughly 1 mile from the shoreline on the western portion of the lake. This one-mile buffer will continue running roughly northerly from the mouth of Bayou Ramous, and from that point on around the eastern portion of the lake there

will be no dredging one-half mile from the shoreline (figure attached).

2. There will be no dredging activity during weekends and holidays, nor during any sponsored boat races.
3. The contractor will be responsible for obtaining a 404 Permit from the Corps of Engineers prior to beginning and will also be responsible for knowing and avoiding the numerous pipelines traversing the lake.
4. The permit will be issued for a one-year period and any application for renewal will be evaluated at that time. The contractor is also responsible for maintaining daily dredging reports for quantity by area which can be inspected at any time by department personnel.
5. The contractor will pay the present shell royalty to the Department (cents per cubic yard). This is a royalty on the amount of production.
6. The Department reserves the right to suspend dredging at any time it deems it is necessary.
7. In addition to the above requirements, all other requirements of the standard dredging permit form shall be in full force and effect.
8. It is recommended that the dredging equipment be fitted with a Recording Loran-C instrument for maintaining a record of the dredges position at all times.

* * *

Commissioner Wayne C. Ducote inquired of Dr. Ford as to whether or not there would be any fall-out or sediment that would flow through the water and go on the shoreline during the dredging operations, and if so, would it effect the beach making it messy or gooey.

Dr. Ford stated that there would be some fall-out since Mr. Guarisco plans to use a mobile sweeping-type operation and it is not fixed in place, such as, the dredging done on an oyster shell reef.

Commissioner Ducote asked if there had been any opposition from the public regarding this permit. Dr. Ford answered that no notice had been given and he had not talked with the Mayor of Morgan City. He had talked with Mr. Charles Decker, Permit Section, Corps of Engineers, and Mr. Decker said it may be "touchy" to get a 404 Permit.

Commissioner Farrelly asked Dr. Ford if he felt he had sufficient time to look into environmental problems, etc., and if he was satisfied under these conditions for the permit to be issued.

Dr. Ford stated they had not looked into it from an ecological standpoint, per se, other than on a gross basis.

Commissioner George N. Gray stated that one thing definitely needed to be looked into and that was the effect this operation may have on the water supply of Morgan City. Part of their water supply is taken from this lake.

Commissioner Gray also pointed out that a study should be made of the possible revenues to be derived from this operation and the impact this may have on recreational usage of the lake.

Commissioner Riggs stated that the area under discussion is only 4,270 acres. He would hesitate to give a dredging permit in that small body of water. He thought the dredging activity would definitely do a lot of damage.

Chairman Knowles said there were some nice homes by the lake and he hasn't heard from any of the home owners. He said he did not know the amount of publicity this permit request has had.

Dr. Ford stated this has not been widely publicized or commented on locally. Also, he has not contacted Mayor Brownell of Morgan City regarding the permit request.

Motion was made by Mr. George N. Gray, seconded by Mr. Wayne C. Ducote, and passed unanimously, that this permit be held up until the Commission has heard from the governing authorities of St. Mary Parish and the City of

Morgan City. The Commission also requests a report be made of the shell reserves, an estimate made of the monetary gains the State would obtain in the one year period, and the financial status of Mr. Guarisco's firm in the event there should be damage to an oil pipeline.

Dr. Ford stated Commissioner Farrelly requested an update on the Texas shrimp closure. He stated there has been no ruling issued thus far.

Mr. Farrelly stated he was interested in the management of the three miles offshore and not so much the closure. He said Corky was at a meeting of the Gulf of Mexico Fishery Management Council last week and it was mentioned at the meeting the Texas closure was such an outstanding success in their opinion they thought we ought to close the whole Gulf of Mexico.

Mr. Farrelly said his concern was that if we don't manage this 3-mile area, it is possible the federal government will manage it for us and would mean they could close or open it as they wished.

Dr. Ford said in the last Legislative Session we had requested authority to manage the resources within the territorial sea. This was not enacted. At this time, we do not have authority to really manage the resources unless we take a very broad approach which may not be supported in court. There is one provision--as a strong conservation measure where we would have to do something and then we probably could get by with it until suits could be filed.

Mr. Corky Perret stated the authority is still in the hands of the Legislature and had this piece of legislation been passed, the Department and Commission would have the authority at this time.

Dr. Ted Ford said the bill presented in the last session was to clearly give us the authority to manage the fisheries resources within the territorial sea. We do derive authority for fisheries management in the territorial sea through Public Law 94265 which is the Fishery Conservation and Management Act. The Gulf of Mexico Fishery Management Council has authority to develop management plans for the fishery conservation zone which is that area lying beyond the territorial seas

of the respective states out to some 200 nautical miles. There has been some discussion about possible preemption. We feel we need to have the authority to manage the resources within our territorial sea so that we are not preempted by the Gulf of Mexico Fishery Management Council and, more specifically, the Secretary of Commerce and the National Marine Fisheries Service.

Dr. Ford stated a bill passed during the 1981 session of the Legislature dealing with Commission powers, Act 787, which gives the Commission comprehensive control of birds, shellfish, finfish and wild quadrupeds. This act did not include shrimp for the general designation of fish which could have been construed to include shrimp. The purpose of Act 787 was to give control of finfish to the Commission. Another problem an amendment was added to one of the basic powers that the Department and the Commission has so that it would self-destruct June 30, 1982. This is another measure that has to be addressed. This has to do with the general authority for fish offshore.

Mr. Joe Herring, Chief, Game Division, said he had a free lease renewal with Boise Lumber Company for approx. 33,000 acres in West Bay Wildlife Management Area for approval. Last month he brought a lease from Quatre Parish Lumber Company for 6,500 acres. West Bay WMA consists of 55,185 acres and this lease represents a large area in West Bay Wildlife Management Area. Several land owners own the land and we lease from them as we do in other wildlife management areas throughout the state. We have had this lease for approximately 25 years and it is now up for renewal again. He recommended that this lease be renewed.

Motion was made by Mr. Wayne Ducote, seconded by Mr. James Farrelly, and passed unanimously, that the free lease of 33,000 acres in West Bay Wildlife Management Area granted by Boise Lumber Company be accepted.

(The full text of the resolution
is here made part of the record)

Lease Renewal
West Bay Wildlife Management Area
Boise Southern Company

WHEREAS, Louisiana Department of Wildlife and Fisheries has received lease renewal forms from Boise Southern Company for approximately 33,000 acres of land in the West Bay Wildlife Management Area, and

WHEREAS, the total acreage of the West Bay Wildlife Management Area is approximately 55,185 acres, and

WHEREAS, West Bay is a very important wildlife management area in providing additional land area for sportsmen to hunt on as well as picnic, nature walks, photography and camping for additional outdoor orientated events, and

WHEREAS, this land is leased to the Louisiana Department of Wildlife and Fisheries for a period of five (5) years free of charge, and

NOW THEREFORE BE IT RESOLVED that the Louisiana Wildlife and Fisheries Commission accept this lease renewal for the Department of Wildlife and Fisheries to manage this 33,000 acres of land in the West Bay Wildlife Management Area for public hunting and other types of recreation and that the Department send a letter to Boise Southern in appreciation for this five (5) year lease free of charge for the sportsmen of our State.

* * *

Chairman Knowles recognized the former Secretary, Mr. Joseph V. Colson, in the audience. He thanked Mr. Colson for attending the meeting and was glad to have him there.

Mr. Bennie Fontenot, Chief, Fish Division, said the Dingell-Johnson Expansion Bill was proposed by Congressman John Breaux, H.B. 2250, and Senator Jennings Randolph, West Virginia, Senate Bill No. 546. Dingell-Johnson funds are federal funds received by this Department as a result of a federal excise tax on rods, reels and artificial baits. DJ Expansion would include an additional 3% federal excise tax on boats, boat motors and boat trailers. It would also include an additional 10% tax on fish hooks, fish lines and creel baskets.

Passage of DJ Expansion would mean approximately \$1,250,000 annually to this Department as opposed to \$150,000 which we receive each year.

Mr. Fontenot also pointed out that if a universal fishing license were enacted in this state, it could mean approximately \$1,600,000 of DJ Funds annually to this Department. Mr. Fontenot stated a survey was made of approximately 600 boat owners which showed that they supported the passage of this bill. Mr. Fontenot recommended the Commission reiterate its support of the Dingell-Johnson Bill, as was done previously, January 26, 1980, Commission Meeting.

Chairman Knowles stated he checked the expenditures of the Pittman-Robinson Funds for a few years back and it appeared that all funds were not utilized. He did not feel a tax should be added if the funds would not be used.

Mr. Bennie Fontenot said he did not know of any funds reverting from Louisiana back into the treasury. The Department has always used all DJ Funds available. There is a big difference in PR Funds and DJ Funds. DJ funds run about \$450,000 and PR Funds run several million dollars.

Mrs. Mary Mitchell, Fiscal Officer, said all the funds are not used in a particular year but that money is carried over to the next year. The money that is not used in one year can be used in the next year or the year after for capital projects, etc.

Mr. Ben Skerrett, Lafayette, Louisiana, President of the Greater Atchafalaya Basin Council and Co-Chairman of the Waterways Committee of the Greater Lafayette Chamber of Commerce, said he was in favor of the DJ Expansion Bill. He was also in favor of a universal fishing license and would like to see it passed in the next session of the Legislature.

Mr. Randy P. Lanctot, Executive Director, Louisiana Wildlife Federation, stated that their approximately 10,000 members across the state adopted a resolution approximately 3 yrs. ago to ask Congressman Breaux to introduce this legislation supporting DJ and reaffirmed this again last year. He said the sportsmen interested

in this thing are really counting on some boating access facilities out of it. As he understood it, the Department is planning to spend a good portion of that money for that purpose.

Commissioner Charles A. Riggs said the only opposition to this bill that he knew of came from the boat manufacturers. The sportsmen organizations have endorsed it. Regarding the universal fishing license, he thought Louisiana was the only state that didn't have a universal fishing license and, also, he did a study of the costs for fishing licenses throughout the nation and found that the average cost was \$8.00; whereas, Louisiana only charges \$2.00. Commissioner Riggs also supports the Dingell-Johnson Expansion Bill.

Motion was made by Mr. Charles A. Riggs, seconded by Mr. M. Bobby Orgeron, and passed unanimously, the resolution supporting the Dingell-Johnson Expansion Bill.

(The full text of the resolution
is here made part of the record)

WHEREAS, H.B. 2250 introduced by Congressman John Breau and S.B. 546, a companion bill, introduced by Senator Jennings Randolph (W.Va.) and co-authored by Senator Russell Long would amend the Dingell-Johnson Act by imposing a 3% federal excise tax on boats, motors and trailers, and extending the 10% manufacturers excise tax to fish hooks, fishing lines and miscellaneous accessories, and

WHEREAS, the money generated from this tax would be pro-rated back to the states on the same basis as the current Dingell-Johnson funds (land area and number of fishing licenses sold), and

WHEREAS, the passage of these bills would result in approximately \$1,250,000 new federal dollars for Louisiana to be matched on a 75% federal - 25% state basis, and

WHEREAS, there is an urgent need for additional funds to provide improved access for boats on Louisiana lakes and streams as well as management oriented studies to enhance other water related uses.

THEREFORE BE IT RESOLVED that the Louisiana Wildlife and Fisheries Commission reiterates its approval and support of the passage of the Dingell-Johnson Expansion Bills.

* * *

Mr. Jesse J. Guidry, Secretary, discussed a recent act of the Legislature, Act 877, which might have some effect on the actions of this Commission and the Department. An Oversight Committee was appointed to oversee all rules made by the Commission. He said this was not new since previously it was the Joint Committee on Natural Resources who had the responsibility of studying our rules and either reject or accept them. Now this goes much further and is a cause for concern because of setting seasons for one area and there may be others. To amend a rule, or adopt a rule or reappeal a rule you must send a proposed action to the Oversight Subcommittee of both houses and you must briefly state a summary of the proposal, the specific citation of the enabling legislation authorizing the adoption of a rule, a statement of the circumstances which require adoption amending a reappeal, a statement of the fiscal impact of the proposed action, and a statement of the economic impact of the proposed action, both approved by the Legislative Fiscal Office. The Legislative Fiscal Office has quite a bit of work to do and that is one place where he was concerned about--acquiring economic impacts and fiscal impacts. This is for the proposed rule which has been discussed by the Louisiana Wildlife and Fisheries Commission.

Setting of hunting seasons, etc., are amendments because dates are changed on all of them and they must be approved. The proposal is sent to the Subcommittee and they have 30 days to take action. If the proposal is accepted it is to be returned here and then we adopt the formal rule and send it back to them. During that period of time, we would be publishing it in the Register. The Subcommittee can amend a rule that has been adopted by this Commission--they can adopt it, reject it, or they can amend it. The Governor has veto power over the actions of the Subcommittee and he has

five days to do so. Should a rule be rejected by both Subcommittees then that rule cannot be brought back for twelve months.

Mr. Guidry stated that there was some question as to whether or not the Commission comes under the jurisdiction of these rules. He felt the Commission comes under the Department of Wildlife and Fisheries since it is one of the agencies acquired under the Reorganization Act.

Mr. Guidry said these new procedures are of concern to us and wanted to bring it to the Commission's attention. It may take at least 2 or 3 months to adopt a rule under this procedure and could hinder the operation of this Commission and this Department. Most other departments simply have a rule that is proposed by the secretary and not by a commission that meets once a month. The secretaries can propose a rule at any time and immediately the rule is proposed.

Chairman Knowles stated that in order to expedite some of the Commission's business it may require changing meeting dates to the first Monday and Tuesday of the month.

Secretary Guidry said he would like to know if the new procedures would adversely effect us and wanted to hear from the people within the Department and for these people to also call it to the attention of the Assistant Secretaries so that we can prepare a case concerning the matter. If it is of sufficient magnitude, we may want to find out how the Legislature would feel about exempting the Commission.

Secretary Guidry mentioned the untenable conditions in the Wildlife and Fisheries Building, such as, the boiler blew up and flooding in Mary Mitchell's office and other sections of the Fiscal Section. Also, an employee was assaulted by a vagrant inside the building. He said plans were being made to move as rapidly as possible and hoped that everyone would bear with us.

Commissioner Gilbert asked for additional information on the new procedures and Secretary Guidry said that we must first forward the proposal and then the

proposal has to be agreed upon by the Commission and then it must be submitted to the Subcommittee who will then decide whether they want to accept this proposal, reject it or amend it and then they will send it back to us. We will then have to take the final action which agrees with their action. The Legislature has given that authority to the Oversight Committee which authority can be taken away from them by the Standing Committee but, as of now, this Act does give authority to the Oversight Committee. Mr. Guidry stated that there were some very fine people in the Oversight Committee and they are very reasonable men.

Mr. Ted Nass, Attorney for the Department of Wildlife and Fisheries, stated there was a temporary restraining order issued enjoining this Commission's banning nets and gill nets in Toledo Bend Reservoir. He said the Judge has a hearing on the case and ruled a preliminary injunction prohibiting the enforcement of those regulations. The Judge ruled that the regulations the Commission adopted pursuant to R.S. 56:610 which allowed us to regulate the taking of finfish in the State of Louisiana might have exceeded this Commission's authority when read together with R.S. 56:322 which permitted gill nets in freshwater fishing. The Judge also stated that he found because of, possibly, legislative intent in R.S. 56:322 that this Commission might have had to show emergency as opposed to the normal standard.

Mr. Nass continued stating that we now have a preliminary injunction enjoining us from enforcing that particular resolution. He spoke with the Judge on Friday and he indicated to Mr. Nass that he would be willing to set an expedited hearing on the permanent injunction but at that hearing he would want all of our experts with their expert testimony, testifying as to why this regulation is necessary and why it was adopted.

Mr. Nass recommended that if we can get a quick hearing on the merits, to proceed in that manner. If not, he suggested that we apply for a hearing on the merits and then appeal the decision on the preliminary injunction.

Mr. John D. Newsom, Assistant Secretary, stated that if the Judge's ruling was based on the authority of the Commission, why was he going to try the case on the merits.

Attorney Nass stated he didn't think the Judge had a firm decision in his mind and that he would probably retry the whole case.

Commissioner Ducote recommended that our laws be researched and where there are conflicts, draft legislation for the upcoming session to change these laws. As the situation is now, every decision made regulating finfish could be brought before the courts.

Attorney Ted Nass said there was another case recently where an attack was made on the way the Commission gives out leases for trapping so the Department may be in trouble there. He suggested that the Commission, the Department, and himself go over all the problems and go to the Legislature with a comprehensive package.

Chairman Knowles stated that he would appoint the appropriate Board Subcommittee to work with Mr. Nass.

Mr. John Newsom stated the first thing that needs to be decided is whether or not this Commission has the authority to establish these regulations and this needs to be done. We need to know because there are eight other lakes in this state right now that are closed to commercial netting. If this case is allowed to stand, it will open the doors for possible lawsuits in every one of those. He said we need a decision as quickly as possible.

Commissioner Farrelly asked Mr. Newsom if he was in agreement with our attorney that we should proceed in the manner outlined by him and try the case on its merits or did he feel we should just appeal it.

Mr. Newsom said if the Judge wants to hear the case on its merits, he didn't understand what a trial on the merits had to do with whether or not this Commission has the authority to establish these regulations. He thought the decision should be appealed.

Attorney Nass stated he would prefer appealing the final judgement as opposed to the preliminary judgement. If we can get a "merits" hearing within two weeks, even if we lose, we have lost under merits and he has to be a little clearer in his decision. For

instance, in a preliminary injunction he could say I think they would win under the merits. That's all he has to say. It could be a tenuous, just a feeling or an inkling; whereas, under merits he would have to say the rules were either arbitrary, capricious, or that the statute does not give us the authority.

Chairman Knowles stated that it was the consensus of the Commission Members that Attorney Ted Nass proceed in the manner as outlined by him.

Commissioner Ducote spoke regarding a boat operator's license for the State of Louisiana. He thought that this was a matter that should be looked into since this could generate some funds for boating safety and boating enforcement. If the Commission approved, this could go into the legislative package.

Mr. Randall Lanctot, Executive Director of the Louisiana Wildlife Federation, spoke in regards to a piece of legislation which was passed in the last session which provided for an income tax check-off for game and non-game and said there were some problems with the legislation in that no money was appropriated for personnel to operate the programs which were created. He requested the Commission to promote this income-tax check-off and wanted the support of the Commission.

Upon motion of Mr. James C. Farrelly, seconded by Mr. George N. Gray, and passed unanimously, that a twenty-five minute film be shown by the Education Section regarding coastal management land loss. This item was not on the agenda.

Mr. Huey Sanders, Education Section, said earlier this year at a Commission Meeting there was a lengthy discussion about the loss of our marshlands. Following this meeting, Mr. Newsom, Mr. Ensminger, Bob Dennie and himself got together and decided to make this documentary type film on land loss. This film was made with the help of Northwestern State University.

Ms. Judy Hughes, Mr. Tom Whitehead and Mr. Mark Cathrell of Northwestern University were in attendance and expressed their appreciation to the Department, WYES, Mr. Donald Landry of Houma, Ron Dugas of Marine Lab, and others for this joint venture in making the film.

Chairman Knowles requested the department heads to have their 5-year plans at the next Commission meeting.

Chairman Knowles announced the next Commission Meeting would be held on January 25 and 26, 1982, in New Orleans, Louisiana.

Motion was made by Mr. Charles A. Riggs, seconded by Mr. M. Bobby Orgeron, and passed unanimously, that the meeting be adjourned.

* * *

Jesse J. Guidry
Secretary

Jesse M. Knowles
Chairman

Minutes transcribed
by Jan Sommers